

## TITLE 19 - DEPARTMENT OF AGRICULTURE, ADMINISTRATIVE DIVISION

### Chapter 1 - RULES OF PRACTICE AND PROCEDURE

#### 001 General Provisions.

##### 001.01 Definitions.

001.01A Department shall mean the Department of Agriculture;

001.01B Director shall mean the Director of the Department;

001.01C Hearing Officer shall mean the Director or any person authorized by him to conduct administrative hearings in accordance with these rules of practice and procedure;

001.01D Proceeding shall mean all matters formally or informally conducted by and subject to the authority and jurisdiction of the Department. Proceedings shall include but not be limited to the following:

001.01D1 Proceedings relating to the promulgation, amendment or repeal of rules and regulations of the Department;

001.01D2 Contested cases (complaint proceedings);

001.01D3 Investigation proceedings conducted pursuant to the provisions of Neb. Rev. Stat. §81-119; and

001.01D4 Proceedings involving declaratory ruling; and

001.01E Pleading shall mean a complaint, petition, answer or motion filed with the Department in accordance with the requirements of 19 NAC 1-001.03.

##### 001.02 The Office of the Department of Agriculture.

001.02A Location. The office of the Department is located on the 4th floor of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

001.02B Mailing Address. The mailing address of the Department is as follows:

Department of Agriculture

P.O. Box 94947

Lincoln, NE 68509-4947

001.02C Official Hours. The official hours of the Department are from 8:00 a.m. to 12:00 noon and from 1:00 to 5:00 p.m. on Mondays through Fridays. Official hours shall not include Saturdays, Sundays or legal holidays. Official acts shall only be performed during official hours. When the filing of a pleading or the doing of an act is required on or before a certain date which falls during non-official hours, the date for filing said pleadings or doing said act shall be extended to the next succeeding date which falls within official hours.

001.03 Filing Requirements.

001.03A Method. Pleadings, documents and correspondence required to be filed with the Department shall be deemed to be properly filed in accordance with these rules when they are:

001.03A1 Delivered to the Department;

001.03A2 Mailed to the Department by certified mail, return receipt requested; or

001.03A3 Mailed to the Department by regular mail and actually received by the Department.

001.03B Form. Pleadings filed with the Department shall be in the following form:

001.03B1 Type written;

001.03B2 Double spaced; and

001.03B3 On legal size paper;

001.03C Withdrawal. Any party making a filing with the Department may not withdraw the filing without approval from the Director;

001.03D Amendment. Pleadings, documents and correspondence filed with the Department may be amended by the party making the filing, provided, such amendment would not prejudice any party and provided further, that the Director approves such amendment.

001.04 Hearings.

001.04A Time and Place. Hearings shall be conducted at the office of the Department unless another location is specifically authorized beforehand by the Director. Hearings shall be on such dates and at such times as the Director shall determine.

001.04B Notice. Notices of hearings conducted under the provisions of these rules shall contain the following:

001.04B1 The date and time of the hearing;

001.04B2 The place of the hearing;

001.04B3 The nature of the proceeding; and

001.04B4 The issues involved, if they can be fully stated at the time. If the issues cannot be fully stated at the time of the notice, an amended notice containing the issues involved shall be issued as soon as the issues can be fully stated.

001.04C Continuances. Any party who desires a continuance shall, immediately upon receipt of notice of hearing, or as soon thereafter as facts requiring such continuance come to his knowledge, notify the Director in writing, by letter, or by telegram, of said desire, stating in detail the reasons why such continuance is necessary. Any such party may be required to submit affidavits in support of such a request. For good cause shown, the Director may grant a continuance. Only under exceptional circumstances will requests for continuance of a hearing be considered unless submitted on or before the tenth day prior to the date set for hearing.

001.04D Consolidation of Hearings. The Director may order two or more proceedings which are legally or factually related to be heard and considered together on a consolidated record, unless any party thereto makes a showing, sufficient to satisfy the Director, that prejudice would result therefrom.

001.04E Waiver. The Director may procure waiver of any notice or waiting period required by these rules from all parties to a proceeding and hold the hearing as soon as necessary. In the event the Director declares that an emergency exists, he may, upon written notice to the parties, waive any or all of the time requirements of these rules and set a matter for hearing as soon as he determines that it is required by the public interest.

001.05 Official Records. When the Department is required by law to prepare an official record of a hearing, such record shall consist of the transcript of a tape recording made of all the testimony given at the hearing, together with any exhibits presented at the hearing. Shorthand notes shall not be transcribed unless requested for the purpose of rehearing. The cost of preparing shorthand notes shall be paid by the party requesting their preparation. Persons presenting documentary evidence at a hearing shall furnish accurate copies of such evidence to all parties to the proceeding and to the Director.

001.06 Subpoenas. In all proceedings wherein the Department has authority to subpoena witnesses, a subpoena requiring the attendance of a witness will be issued by the Director on written application of any party, or on order of the Director. Subpoenas for the production of

accounts, books, documents, or papers unless directed by the Director on his own motion, will be issued by the Director only on written application by a party stating specifically which accounts, books, documents, or papers are required and the facts expected to be proved thereby. All parties directed to produce accounts, books, documents, or papers shall furnish and deliver the same at the time and to the place specified in the subpoena. A subpoena issued pursuant to this rule shall be served in a manner permitted by law which shall include service by certified mail, return receipt requested. In the case of disobedience to a subpoena, the Director may invoke the aid of any court of this state in requiring the attendance and testimony of the witnesses and the production of accounts, books, documents, or papers. Charges for service of a subpoena are to be paid prior to the date set for hearing by the parties at whose instance the subpoena is issued.

001.07 Witness Fees. Any witness who is summoned and who responds thereto is entitled to the same fee as is paid for like service in the district courts of Nebraska. Applications made for the attendance of a witness shall be accompanied by a certified check, payable to the order of the witness, and equal in amount to the witness' traveling fee and a fee for one day's attendance at the hearing. Said certified check shall be tendered the witness when the subpoena is served upon him. Additional fees due the witness, if any, shall be paid at the close of the hearing by the party at whose instance the witness is summoned.

001.08 Depositions. The taking of depositions in proceedings before the Director shall be in the manner prescribed by law for taking depositions in civil actions in the district courts.

002 Proceedings Relating to the Promulgation, Amendment or Repeal of Rules and Regulations of the Department.

002.01 Submission of Petition. Any interested person may, by petition, request the Department to promulgate, amend or repeal any rule or regulation subject to the authority and jurisdiction of the Department. Such a petition shall:

002.01A Be in the form prescribed by 19 NAC 1-006.01;

002.01B Be filed with the Department in accordance with the requirements set out in 19 NAC 1-001.03; and

002.01C When filed, be accompanied by three (3) duplicate copies.

002.02 Consideration of Petition. The Director shall give consideration to all petitions submitted to him in the manner described in 19 NAC 1-002.01, above. The Director shall determine whether the proposed rule change is within the statutory authority and jurisdiction of the Department. If the proposed rule change is within the statutory authority and jurisdiction of the Department, the Director shall, within ninety (90) days of the filing of the petition, set the matter down for hearing in accordance with the provisions of Neb. Rev. Stat. §84-907. If the proposed rule change is not within the statutory authority and jurisdiction of the Department, the matter shall not be set down for hearing. The Director shall, within thirty (30) days of the filing of the petition, notify petitioner as to whether or not a hearing will be had on the proposed change, giving reasons in support of his decision.

002.03 Hearings on the Promulgation, Amendment or Repeal of Rules and Regulations of the Department.

002.03A Applicability. The provisions of this subsection shall apply to all hearings conducted by the Department under the provisions of Neb. Rev. Stat. §84-907.

002.03B Record. Hearings on the promulgation, amendment or repeal of rules shall be conducted by a hearing officer. An official record need not be prepared, but sufficient notations should be made of the proceedings so as to allow the hearing officer to prepare an accurate report on the hearing.

002.03C Evidence and Procedure. The admission of testimony and evidence at the hearing shall not be governed by the formal rules of evidence. The hearing officer shall admit and give probative effect to all relevant testimony and evidence presented which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The hearing officer may utilize his experience and specialize knowledge in the evaluation of the testimony and evidence presented. The hearing officer shall rule on any motions or objections presented and may interrogate any witnesses. Members of the Department staff may also, with the approval of the hearing officer, present testimony and evidence and interrogate any witnesses.

002.03D Format. The format for hearings under this section shall be as follows:

002.03D1 Hearing officer opens the proceedings;

002.03D2 Hearing officer reads into the record the notice of hearing and affidavit of publication;

002.03D3 Hearing officer reads the petition;

002.03D4 Testimony and evidence favoring the proposed change is presented;

002.03D5 Testimony and evidence opposing the proposed change is presented;

002.03D6 Hearing officer closes the hearing.

002.04 Disposition of Petition.

002.04A Consideration. After the hearing provided for in 19 NAC 1-002.03, above, the Director shall make a determination as to the advisability of the proposed rule change. Considerations to be looked to by the Director shall include but not be limited to the following:

002.04A1 The benefits to be gained by the people of the State of Nebraska.

002.04A2 The benefits to be gained by the agricultural interests of the state; and

002.04A3 The benefits to be gained by the Department in the enforcement and administration of the laws within its jurisdiction. If the Director decides favorably on the advisability of the proposed rule change, he shall, in the manner set out in Neb. Rev. Stat. §§84-901, et seq., cause the rule change to be adopted.

002.04B Notice. Petitioner shall be notified, within thirty (30) days of the hearing, of the Director's decision as to whether the proposed rule change should be adopted. Such notification shall include reasons in support of the Director's decision.

### 003 Procedure Governing Contested Cases.

003.01 Parties. Parties to a contested case are defined as follows:

003.01A Complainant shall mean any person, organization, or corporation who files a complaint with the Director alleging violations subject to the statutory authority or jurisdiction of the Department.

003.01B Defendant shall mean any person within the statutory authority or jurisdiction of the Department against whom any complaint is filed.

### 003.02 Pleadings.

#### 003.02A Complaint.

003.02A1 A contested case shall be commenced by the filing of a complaint. Such complaint shall:

003.02A1a Follow, as a minimum standard, the form prescribed in 19 NAC 1-006.02;

003.02A1b Be filed with the Department in accordance with the requirements set out in 19 NAC 1-001.03; and

003.02A1c When filed, be accompanied by three (3) duplicate copies.

003.02A2 The Director shall serve a copy of the complaint upon each defendant by certified mail, return receipt requested. The complaint shall be mailed not less than twenty (20) calendar days prior to the date of hearing.

#### 003.02B Answer.

003.02B1 In order to clarify and narrow the contested issues, the defendant may answer the complaint. Such answer shall:

003.02B1a Follow, as a minimum standard, the form prescribed in 19 NAC 1-006.03;

003.02B1b Be filed with the Department in accordance with the requirements set out in 19 NAC 1-001.03; and

003.02B1c When filed, be accompanied by three (3) duplicate copies.

003.02B2 The answer shall be mailed or personally delivered to the Department within ten (10) calendar days of the date of receipt of the complaint by the defendant.

003.02B3 The Director shall serve a copy of the answer on the complainant prior to the prehearing conference, or if none is held, prior to the hearing.

#### 003.03 Prehearing Conference.

003.03A At any time after the commencement of a contested case and prior to the hearing, the hearing officer may, at his discretion and pursuant to written notice to parties, conduct an informal conference, the purpose of which may include:

003.03A1 Settlement discussion;

003.03A2 The narrowing of issues;

003.03A3 The ascertainment of witnesses; and

003.03A4 The accomplishment of any other purpose the Director deems necessary.

003.03B No official record need be prepared for any prehearing conference; Provided, that notes shall be kept of such conference and transformed into a Report of Prehearing Conference prior to any hearing.

003.03C Following such prehearing conference, informal disposition may be made of the contested case by stipulation, agreed settlement, or consent order. Any informal disposition shall be approved by the hearing officer.

003.03D A prehearing conference shall not be held later than five days prior to the hearing, except that a prehearing conference may be held later than five days prior to the hearing if agreed to by all parties and the hearing officer.

#### 003.04 Hearing.

003.04A Notice of Hearing. All parties shall be given notice of the hearing in a contested case not less than twenty (20) days prior to the date of hearing. Such notice shall follow the requirements of 19 NAC 1-001.04B.

003.04B Hearing Procedure. The procedure for all hearings in contested cases shall be the same as that prescribed in 19 NAC 1-001.04.

003.04C Hearing Format. The format for hearings under this section shall be as follows:

003.04C1 Hearing officer opens the hearing;

003.04C2 Complainant gives opening argument;

003.04C3 Defendant gives opening argument;

003.04C4 Complainant presents evidence and testimony;

003.04C5 Defendant presents evidence and testimony;

003.04C6 Complainant gives closing argument;

003.04C7 Defendant gives closing argument;

003.04C8 Complainant gives rebuttal; and

003.04C9 Hearing officer closes the hearing.

003.04D Evidence and Testimony. The admission of evidence and testimony in hearings held under this section shall be governed by the rules of evidence in civil actions under the Revised Statutes of Nebraska and the decisions of the Nebraska Supreme Court. The Hearing Officer, in his discretion, however, may admit and give probative effect to testimony and evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. The Hearing Officer shall give effect to the rules of privilege recognized by law. The Hearing Officer may exclude incompetent, irrelevant, immaterial and cumulative evidence; Provided, that any party to the hearing may request that the hearing officer be bound by the rules of evidence applicable in a State of Nebraska district court by delivering to the hearing officer at least three (3) days prior to the holding of such hearing a written request therefor, such request to include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearings. The hearing officer may utilize his experience, technical competence, and specialized knowledge in the evaluation of the testimony and evidence presented. The hearing officer shall rule on any motions or objections presented and may interrogate any witness. All parties to the hearing shall have the right of cross-examination of any testifying witness; Provided, that the hearing officer may limit cross-examination either by multiple parties having common interests or to prevent cumulative



testimony. Members of the Department staff may also, with the approval of the hearing officer, present testimony and evidence and interrogate any witnesses.

003.04E Subpoenas. The procedure governing subpoenas in a hearing under this section shall be the same as that prescribed in 19 NAC 1-001.06.

003.04F Witness Fees. The procedure governing witness fees in a hearing under this section shall be the same as that prescribed in 19 NAC 1-001.07.

003.04G Depositions. The procedure governing depositions in a hearing under this section shall be the same as that prescribed in 19 NAC 1-001.08.

003.04H Costs. All costs of a hearing under this section shall be paid by the party or parties against whom a final decision is rendered.

003.04I Official Records. The Department shall prepare an official record of each hearing held pursuant to this section, which record shall meet the requirements of 19 NAC 1-001.05. All evidence including records and documents in the possession of the Department of which any party desires to avail itself during a hearing under this section shall be offered and made a part of the record in the case.

003.04J Briefs. Briefs on contested issues may be submitted voluntarily prior to a hearing under this section by any party or may be required by the hearing officer. The hearing officer shall designate the time for filing and number of copies to be filed in regard to any required brief.

003.05 Disposition of Contested Cases.

003.05A Decision and Order. Following a hearing on a contested case, the hearing officer shall render a decision and order, which shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact.

003.05B Notice of Decision and Order. Parties to the proceeding in a contested case shall be notified within thirty (30) days of the hearing of the decision and order in person or by certified mail, return receipt requested. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his attorney of record.

003.05C Informal Disposition. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. Any informal disposition shall be approved by the hearing officer.

004 Investigation Proceedings.

004.01 Authority. The Department, through the Director, may at any time on its own motion conduct any investigation necessary to the

proper performance of the Department's duties or necessary to the efficient enforcement of the laws within the authority or jurisdiction of the Department. The Department shall have those powers enumerated in Neb. Rev. Stat. §81-119, in addition to all other powers of the Department authorized by law.

004.02 Hearings. Hearings conducted as part of an investigation proceeding shall be conducted by a hearing officer. Witnesses called upon to testify may be required to testify under oath. An official record as described by 19 NAC 1-001.05 shall be prepared at all hearings conducted as part of an investigation proceeding.

004.03 Evidence and Procedure. The admission of testimony and evidence at investigation hearings shall not be governed by the formal rules of evidence. The hearing officer shall admit and give probative effect to all relevant testimony and evidence presented which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Testimony and evidence at investigation hearings may be given by the Director, Department staff, or by witnesses. Witnesses may be interrogated by the hearing officer, the Director, or by Department staff with the approval of the Director. The hearing officer shall rule on any objections presented at the hearing.

004.04 Notice to Witnesses. Witnesses called upon to testify at investigation hearings shall be notified of the hearings at least ten (10) days prior to the date set for hearing either by certified mail, return receipt requested, or by delivery of notice. Such notice shall meet the requirements of 19 NAC 1-001.04B.

004.05 Format. The format for investigation hearings shall be as follows:

004.05A Hearing officer opens the proceedings;

004.05B Hearing officer states the subject matter of the proceedings and the issues involved;

004.05C Testimony and evidence of the Director is presented;

004.05D Testimony and evidence of the Department staff is presented;

004.05E Testimony and evidence of witnesses is presented;

004.05F Closing comments are presented by the Director;

004.05G Hearing officer closes the hearing.

005 Declaratory Ruling Proceedings.

005.01 Submission of Petition. Any interested person may, by petition, request the Department to issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute subject to the authority or jurisdiction of the Department. Such petition shall:

005.01A Be in the form prescribed by 19 NAC 1-006.04;

005.01B Be filed with the Department in accordance with the requirements set out in 19 NAC 1-001.03; and

005.01C When filed, be accompanied by three (3) duplicate copies. Whenever a declaratory ruling is sought with respect to the constitutionality or validity of any rule or statute enforceable by the Director, the Attorney General of the State of Nebraska shall be served a copy of the petition and shall be entitled to be heard.

005.02 Consideration of Petition. The Director shall give consideration to all petitions submitted to him in the manner described in section 19 NAC 1-005.01.

005.02A Whether the rule or statute, which is the subject of the petition, is within the authority and jurisdiction of the Department;

005.02B Whether the ruling, if issued, would terminate the uncertainty or controversy giving rise to the petition; and

005.02C Whether the petitioner seeks a declaratory ruling applicable to any class.

If the Director finds that the Department does have authority and jurisdiction, and that a ruling could terminate the controversy, and that the petitioner is not seeking a ruling applicable to a class, the Director shall, within ninety (90) days of the filing of the petition, set the matter down for hearing. If the Director finds that any of the aforementioned conditions do not exist, the matter will not be set down for hearing. The Director shall notify petitioner, within thirty (30) days of the filing of the petition, as to whether or not a hearing will be had on the requested ruling, giving reasons in support of his decision.

005.03 Hearings on Declaratory Rulings.

005.03A Notice. All persons who have or claim any interest in, or who would be affected by the disposition of the petition shall be notified of the hearing in the manner set out in 19 NAC 1-001.04B. If the requested ruling relates to the constitutionality or validity of a rule or statute, the Attorney General shall also be notified in the same manner. All notices shall be given at least twenty (20) days prior to the date of the hearing.

005.03B Witnesses. If witnesses need to be summoned, the provisions of 19 NAC 1-004.03 shall apply.

005.03C Record. Hearings on declaratory rulings shall be conducted by a hearing officer, and an official record shall be prepared.

005.03D Evidence and Procedure. The admission of testimony and evidence at hearings on declaratory rulings shall not be governed by the formal rules of evidence. The hearing officer shall admit and give probative effect to all relevant testimony and evidence presented which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs.

005.03D1 Testimony and evidence at hearings on declaratory rulings may be given by the following persons:

005.03D1a Petitioners;

005.03D1b Persons who have or claim an interest in, or who would be affected by the disposition of the petition;

005.03D1c The Director;

005.03D1d Department staff;

005.03D1e The Attorney General or his designate; or

005.03D1f Witnesses.

005.03D2 Witnesses may be interrogated by the following persons:

005.03D2a The Director;

005.03D2b The hearing officer;

005.03D2c Department staff with the approval of the Director; or

005.03D2d The Attorney General or his designate.

005.03D3 The hearing officer shall rule on any objections or motions presented at the hearing.

005.03E Format.

005.03E1 Hearing officer opens the proceedings;

005.03E2 Hearing officer reads the petition and states the subject matter of the hearing and the issues involved;

005.03E3 Testimony and evidence of the petitioner and his witnesses is presented;

005.03E4 Testimony and evidence of persons who have or claim an interest in, or who would be affected by the disposition of the petition is presented;

005.03E5 Testimony and evidence of the Director is presented;

005.03E6 Testimony and evidence of Department staff is presented; and

005.03E7 Testimony and evidence of the Attorney General or his designate, if present, is presented;

005.03E8 Closing comments are presented by the Director; and

005.03E9 Hearing officer closes the hearing.

005.04 Disposition of Petition.

005.04A Consideration. After the hearing on the declaratory ruling, the Director shall formulate a ruling stating the applicability of the rule or statute under consideration to the person, property or state of facts alleged in the petition. Such ruling, when issued after argument at the hearing and when stated by the Director to be binding, shall be binding between the petitioner and the Department with respect to the person, property or state of facts alleged.

005.04B Notice. The following persons shall be notified of the ruling of the Director within thirty (30) days of the hearing:

005.04B1 Petitioner;

005.04B2 Persons having or claiming an interest in, or who are affected by the disposition of the petition; and

005.04B3 The Attorney General.

Such notice shall completely state the Director's ruling and include reasons in support of the ruling.

005.05 Informal Disposition. Nothing contained in these rules pertaining to declaratory ruling proceedings shall prevent the Director from informally issuing opinions as to the applicability of particular rules to particular persons, property or states of fact. Such opinions shall not be binding as between the Department and the person requesting the opinion. Persons requesting informal opinions shall be notified by the Director that the opinion given is not binding and further notified of the procedure required to obtain a binding opinion.

006 Forms.

006.01 Petition.

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BEFORE THE DEPARTMENT OF AGRICULTURE, STATE OF NEBRASKA

IN THE MATTER OF ) PETITION

) FOR

)

)

)

(Give name and address of ) (Give subject matter)

petitioner)

COMES NOW PETITIONER and requests the Department of Agriculture to

(If petition is for a new rule, state its precise wording.)

(If petition is for an amendment, state present rule and wording of the requested amendment.)

(If petition is for repeal of a rule, state the present rule.)

Petitioner states that the above mentioned rule change is needed for the following reasons:

(If more room is needed, attach separate sheets.)

DATE SIGNATURE OF PETITIONER

\*\*\*\*\*

006.02 Complaint.

BEFORE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE

STATE OF NEBRASKA

)

(Name) )

)

(Address) )

) COMPLAINT

Complainant, )

) FOR -vs- )

)

) (Specify result sought)

(Name) )

)

)

(Address) )

)

Defendant. )

Complainant alleges:

1. (Statement of the grounds upon which the Department's statutory authority and jurisdiction depends.)
2. (Statement of the alleged violation(s).)
3. (Statement of facts upon which the complaint is based.)

DATE SIGNATURE OF COMPLAINANT

\*\*\*\*\*

006.03 Answer.

BEFORE THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE

STATE OF NEBRASKA

)

(Name) )

)

(Address) )

)

Complainant, )

)

-vs- ) ANSWER



)

)

(Name) )

)

)

(Address) )

)

Defendant. )

Defendant answers:

1. (Statement of any defense to the complaint.)

2. (Admission or denial of each material allegations of the complaint.)

DATE SIGNATURE OF DEFENDANT

\*\*\*\*\*

006.04 Petition.

BEFORE THE DEPARTMENT OF AGRICULTURE, STATE OF NEBRASKA

IN THE MATTER OF ) PETITION

) FOR

) Declaratory Ruling On

)

) (Give name and address of ) (Give subject matter)

petitioner)

COMES NOW PETITIONER and requests the Department of Agriculture to for a declaratory ruling with respect to the applicability of the  
aforementioned to the following described person, property (specify statute or rule)

or state of facts:

Petitioner states that the aforementioned ruling is needed for the following reasons:

(Show how ruling would terminate controversy or uncertainty.)

Petitioner alleges that the following named persons are the only persons who have or claim any interest, or would be affected by the  
disposition of this petition:

(Name) (Address) (City) (State)

WHEREFORE, Petitioner prays that the Director take the following action:

DATE SIGNATURE OF PETITIONER

(If more room is needed, attach separate sheets.)

007 Annotation. Neb. Rev. Stat. §§81-119 and 84-901, et seq.

TITLE 19 - DEPARTMENT OF AGRICULTURE, ADMINISTRATION DIVISION

Chapter 2 - FARM MEDIATION REGULATIONS

001 Statement of Purpose. The purpose of these regulations is to aid in administering the Farm Mediation Act, Neb. Rev. Stat. §§2-4801 to 2-4816.

002 Administration. The Farm Mediation Act and these regulations shall be administered by the Department of Agriculture, located in the

State Office Building, Fourth Floor, 301 Centennial Mall South, Lincoln, Nebraska. The mailing address is: P.O. Box 94947, Lincoln, Nebraska 68509-4947. The telephone number is: (402) 471-2341.

003 Definitions. In addition to the terms listed below, the definition of terms found in the Farm Mediation Act shall apply to such terms when found in these regulations.

003.01 ACT shall mean the Farm Mediation Act.

003.02 ADMINISTRATOR shall mean the Nebraska Department of Agriculture.

003.03 PERSON shall mean bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, joint stock companies, and associations.

004 Financial Analysis.

004.01 The administrator shall contract with one or more persons to provide the borrower with an analysis of his or her business and personal financial situation as set out in the act.

004.02 Such financial analysis shall be available to any borrower requesting or consenting to mediation and shall be available at no cost to such borrower.

04.03 To be eligible to contract to provide financial analysis, a person shall be able to meet the requirements of the contract entered into between the administrator and such person. At a minimum, the contract shall provide that the person providing financial analysis shall be trained and experienced in agricultural financial analysis and have a basic understanding of production agriculture. The administrator shall retain the authority to review the qualifications and performance of any person providing financial analysis to borrowers.

005 Legal Assistance

005.01 The administrator shall provide any available information regarding legal assistance programs for borrowers.

005.02 The administrator may contract with one or more persons to provide legal assistance to borrowers involved in mediation.

005.03 To be eligible to contract to provide legal assistance, a person shall be able to meet the requirements of the contract entered into between the administrator and such person. At a minimum, the contract shall provide that the person providing legal assistance be qualified in agricultural credit problems of borrowers. The administrator shall retain the authority to review the qualifications and performance of any person providing legal assistance to borrowers.

## 006 Mediation.

006.01 Mediation shall be available at any time to any borrower and all creditors of such borrower, whether secured or unsecured. No party is required to attend any mediation meeting. Failure to attend any mediation meeting or to participate in mediation shall not affect the rights of a borrower or creditor in any manner.

006.02 A request for mediation shall be submitted in writing on a form provided by the administrator. The request form shall be signed by the party requesting mediation and shall include a consent to mediate and the names, addresses, and telephone numbers of the parties who are being requested to mediate. The request may be made by either the borrower or a creditor.

006.03 Notice of the request for mediation shall be sent to all borrowers or creditors listed on the request and shall include a consent to mediate. The party requesting mediation shall be notified of the other parties' intention to participate in mediation.

006.04 If a consent to mediate is signed by the borrower and at least one creditor, a mediation meeting notice shall be sent within 20 calendar days after receiving a written mediation request to all the consenting parties setting a time and place for an initial mediation meeting between the borrower, the creditor or creditors, and a mediator. The notice shall also include the names of the mediator and all persons intending to be present at the meeting.

006.05 All parties shall be advised of the importance of adequate preparation prior to the mediation meeting. The borrowers additionally shall be advised that assistance in the analysis of their business and personal financial situation is available at no cost to the borrower.

006.06 An initial mediation meeting shall be held within 20 calendar days of the issuance of the mediation meeting notice. Additional meetings shall be scheduled if a request is made by the parties. The mediation period shall extend for 60 calendar days after the receipt of the mediation request. If all parties consent, mediation may continue after the end of the mediation period.

006.07 All parties participating in mediation shall be present at the mediation meeting and have the authority to negotiate agreements with the other parties in mediation. If an agreement is reached between the borrower and the creditor or creditors, a draft encompassing the terms of the agreement shall be prepared. All parties shall sign the agreement and each shall receive a copy. All parties retain the right to have negotiated agreements reviewed and approved subsequent to the mediation meeting. No agreement shall become final until all parties have had the opportunity to have the agreement reviewed. The final agreement may be enforced as a legal contract between the parties.

006.08 Each party participating in mediation shall be charged not more than \$25 per hour for the actual time spent in mediation meetings. In cases of extreme financial hardship, such fee may be waived in whole or in part. The fee shall be collected by the farm mediation services to offset its costs in carrying out the terms of the contract entered into with the administrator.

006.09 Any party to mediation may request a substitution of the mediator. The request shall be made, in writing, to the administrator and shall specify the reason for the request. The administrator may order a substitution if it determines that a conflict of interest exists or that there are

reasonable grounds to believe that a mediator cannot act fairly and impartially in the matter. The substitution shall be issued in writing and delivered to all parties participating in mediation.

006.10 All mediation meetings shall be confidential with only the mediator, the parties consenting to mediate, and their representatives or advisors present. Other persons may be present at such a meeting only upon the express consent of all participating parties. All persons present at the mediation meeting shall sign a statement agreeing to abide by the confidentiality requirements.

006.11 All data regarding the finances of borrowers and creditors, which is created, collected, and maintained, shall not be public records and shall be held in strict confidence by all parties in the mediation. If all parties consent to disclosure, such information may be disclosed pursuant to the terms of the consent.

#### 007 Mediators.

007.01 The administrator shall require at least 30 hours of training on the mediation process, mediation skills, and agricultural farm finance. Upon approval by the administrator, past experience or training may be substituted for all or part of this requirement. Additional update training shall be required.

007.02 The mediator shall encourage and assist the parties reaching settlement. The mediator may not impose a settlement upon any party.

007.03 At the mediation meeting the mediator shall explain to the parties the process and goals of mediation, the rules of conduct for all persons at the mediation meeting, the fees involved, and that the mediator is neutral in the proceeding. The mediator shall inform the parties of any perceived or potential conflict of interest or bias he or she may have.

007.04 The administrator shall retain the authority to review the qualifications and performance of any mediator.

007.05 No mediator acting under this act shall:

007.05A Provide legal or financial advice to the parties in mediation; except that a mediator may refer a party to alternative sources of professional consultation or assistance. A mediator may not solicit or accept any payment or thing of value, either directly or indirectly, in return for making a referral; or

007.05B Disclose any information or records obtained in connection with the mediation except upon written agreement with the parties.

007.06 The administrator shall maintain a list of all mediators under the Act.

008 Status of Contractors. Persons under contract to provide farm mediation services, financial analysis services, or legal services are not state agencies for any purpose by virtue of such contract, and their staff, employees, or contractors shall not be considered employees of the

state for any such purpose.

009 Education. The administrator shall conduct a comprehensive education plan to promote and encourage the use of mediation. Such educational plan may include:

009.01 Working with borrowers and creditors to explain the advantages of mediation;

009.02 Preparing and disseminating information on mediation to all interested persons;

009.03 Developing articles and news releases on mediation for publication;

009.04 Coordinating activities with other local, state, and national entities, both public and private, on mediation;

009.05 Providing presentations and workshops on mediation; and

009.06 Performing any other activity which would promote the availability and use of mediation.

010 Statistical Data. The administrator shall maintain complete statistical records of program participation and cost. Such records shall be available upon request. At a minimum, such records shall include:

010.01 The total number of requests for mediation;

010.02 A breakdown of the number of requests made by borrowers and those made by creditors;

010.03 The number of cases agreeing to mediate;

010.04 The number of cases reaching a mediated agreement;

010.05 The number of cases reaching agreement outside of mediation;

010.06 The average length of the mediation session;

010.07 The average fee paid by each party; and

010.08 The location of the parties involved in mediation by crop reporting district.

011 Annotation. Neb. Rev. Stat. §§2-4801 to 2-4816 (Cum. Supp. 1988).